FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

THE CHAIRMAN

September 16, 2005

The Honorable John Conyers, Jr.
United States House of Representatives
Washington, D.C. 20515

Dear Representative Conyers:

Thank you for the letter of September 1, 2005, from you and some of your House Judiciary Committee colleagues that expresses your concern about significant increases in gasoline prices and asks the Federal Trade Commission to commence an investigation of reports of "price gouging" in gasoline markets. Your letter suggests that the gasoline price increases at issue do not arise solely from the market disruptions caused by Hurricane Katrina, and you request that the Commission investigate the factors that have led to those increases. As you may know, there is no federal law specifically prohibiting "price gouging." Some states do have laws addressing the subject that are triggered when emergency situations develop. The Federal Trade Commission Act, however, prohibits unfair methods of competition, and the federal investigation that you and your colleagues envision would therefore complement ongoing and contemplated state investigations of practices in the industry.

A fair and competitive petroleum industry is of vital importance to the national security and economic prosperity of the United States, as the effects from Hurricane Katrina have most recently confirmed. As you point out, the terrible tragedy the hurricane has inflicted on the residents of the Gulf Coast has been accompanied by major disruptions in oil industry infrastructure and further increases in gasoline and other petroleum product prices across the country. As the Commission confirmed most recently in its September 7 testimony before the House Committee on Energy and Commerce, in the aftermath of Hurricane Katrina, we continue to use all of our available tools to promote competition and protect consumers in the petroleum industry, including careful scrutiny of industry behavior to detect anticompetitive conduct, effective challenges to mergers and corporate practices that violate the antitrust laws, and comprehensive research to understand petroleum sector developments. I have enclosed a copy of that testimony for your review.

Your correspondence has been forwarded to the other Commissioners and to appropriate members of the Commission staff, and I can assure you that the information you have provided and the concerns you have expressed are receiving careful consideration. In particular, the Commission already has begun an investigation to determine whether the price of gasoline is being artificially manipulated by reducing refinery capacity or by any other form of market manipulation at any level of supply, in response to Section 1809 of the Energy Policy Act of 2005. This investigation will, of course, include a review of possibly anticompetitive behavior in the wake of Hurricane Katrina. The Commission's Bureau of Competition is conducting the investigation in close consultation and cooperation with the Bureau of Economics, and they will pursue the investigation as expeditiously as possible.

In addition, the Commission will maintain its program of continuously monitoring gasoline and diesel fuel price movements in 20 wholesale regions and approximately 360 retail areas across the nation to identify corporate conduct in petroleum markets that may violate the antitrust laws. Our economists and attorneys scrutinize every unusual price movement to ascertain whether it arises from conduct in violation of the antitrust laws or instead stems from another cause, such as pipeline disruptions, refinery production problems, low inventories, transitions to new fuel requirements imposed by government air quality standards, or some other supply-related problem. Although these examinations by our staff to date have revealed market-related causes for the unusual price movements detected before Hurricane Katrina, the Commission will take swift and decisive action if our scrutiny of price movements in the aftermath of Katrina – or at any other time – reveals the use of illegal anticompetitive practices.

The Commission investigation will of course also be informed by our extensive previous investigations and research in the petroleum industry. In particular, the Commission recently issued a report – *Gasoline Price Changes: The Dynamic of Supply, Demand, and Competition* – that examines in detail numerous factors that produce fluctuations in gasoline prices, including the cost of crude oil, increasing domestic and international demand, and federal, state, and local regulations. The report is based on research and on the expertise that the FTC has acquired in investigating oil-related antitrust matters, holding public hearings, undertaking empirical economic studies, and preparing extensive reports on oil-related issues over the past 30 years. I have enclosed a copy of that report for your information.[1]

As the enclosed testimony indicates, the FTC continues to pursue cases and investigations addressing mergers, acquisitions, and practices that may injure competition in the petroleum sector. For example, in June of this year, the Commission announced settlements of three important petroleum industry cases: its challenge to Chevron Corporation's proposed acquisition of Unocal Corporation; its administrative litigation to address allegations that a Unocal subsidiary violated the antitrust laws by defrauding the California Air Resources Board in connection with reformulated gasoline regulatory proceedings; and its challenge to Valero's proposed acquisition of Kaneb Services LLC and Kaneb Pipe Line Partners. In addition, the FTC recently filed a federal court complaint challenging a petroleum merger in Hawaii that allegedly would reduce the number of gasoline marketers and bulk suppliers in the state and lead to higher

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1 The report is also available at http://www.ftc.gov/opa/2005/07/gaspricefactor.htm.

gasoline prices for Hawaii consumers.[2] I have enclosed copies of the Commission news releases describing these cases for your review.

These cases, however, are only the most recent examples of the Commission's historically strong and active law enforcement presence in the petroleum sector. Commission enforcement statistics establish that the agency has pursued more merger cases at lower levels of market concentration in the petroleum industry than in other industries, and has aggressively secured relief to prevent the alleged anticompetitive effects of these transactions in both moderately concentrated and highly concentrated petroleum markets. We will promptly challenge any merger or practice that violates any law that the Commission enforces.

The Commission deeply appreciates your concern about consumers in petroleum markets, and the agency will steadfastly maintain its extensive efforts to promote competition and protect consumers in those markets. If you or your staff have any questions or comments, please feel free to call Anna Davis, the Director of our Office of Congressional Relations, at (202) 326-2195.

Sincerely,

Deborah P. Majoras

Deborah Platt Majoras
Chairman

Enclosures

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2 The *Aloha* action recently was resolved with the execution by the parties of a 20-year throughput agreement that will preserve competition threatened by the acquisition.